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Honorable Rosanna Malouf Peterson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LYNDA THOMAS,

Plaintiff,

vs.

APEX FINANCIAL MANAGEMENT,
LLC et al.,

Defendants.

Case No.: CV-10-067-RMP

ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT APEX

COMES NOW Defendant Apex Financial Management, LLC (“Apex”),
without waiving any objections, rights, and defenses relating to jurisdiction and
process, hereby answers Plaintiff’s Second Amended Complaint (“Plaintiff’s
Complaint”) as follows:

I. ANSWER

1.1. Apex admits this is an action brought under the FDCPA, TCPA and

ANSWER AND AFFIRMATIVE DEFENSES OF
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1 WCAA, and denies liability so denies the remaining allegations contained in
2 Paragraph 1 of Plaintiff's Complaint.

3 1.2. Apex admits this Court has jurisdiction for claims under the FDCPA,
4 and denies the remaining allegations contained in Paragraph 2 of Plaintiff's
5 Complaint.

6 1.3. Apex lacks sufficient information to admit or deny the allegations in
7 Paragraph 3 of Plaintiff's Complaint, and, therefore, denies the allegations contained
8 in Paragraph 3 of Plaintiff's Complaint.

9 1.4. Apex lacks sufficient information to admit or deny the allegations in
10 Paragraph 4 of Plaintiff's Complaint, and, therefore, denies the allegations contained
11 in Paragraph 4 of Plaintiff's Complaint.

12 1.5. Apex lacks sufficient information to admit or deny the allegations in
13 Paragraph 5 of Plaintiff's Complaint, and, therefore, denies the allegations contained
14 in Paragraph 5 of Plaintiff's Complaint.

15 1.6. Apex admits Equable Ascent Financial, LLC (EAF) is an entity, and
16 denies the remaining allegations contained in Paragraph 6 of Plaintiff's Complaint.

17 1.7. Apex admits the allegations contained in Paragraph 7 of Plaintiff's
18 Complaint.

19 1.8. Apex denies the allegations contained in Paragraph 8 of Plaintiff's
20 Complaint.

21 1.9. Apex admits EAF purchases accounts, and denies the remaining
22 allegations contained in Paragraph 9 of Plaintiff's Complaint.

ANSWER AND AFFIRMATIVE DEFENSES OF
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1 1.10. Apex admits EAF purchases accounts, and denies the remaining
2 allegations contained in Paragraph 10 of Plaintiff's Complaint.

3 1.11. Apex admits EAF purchases accounts, and denies the remaining
4 allegations contained in Paragraph 11 of Plaintiff's Complaint.

5 1.12. Apex admits EAF offers portfolio management, and denies the
6 remaining allegations contained in Paragraph 12 of Plaintiff's Complaint.

7 1.13. Apex admits EAF offers portfolio management, and denies the
8 remaining allegations contained in Paragraph 13 of Plaintiff's Complaint.

9 1.14. Apex admits EAF offers portfolio management, and denies the
10 remaining allegations contained in Paragraph 14 of Plaintiff's Complaint.

11 1.15. Apex admits EAF offers portfolio management, and denies the
12 remaining allegations contained in Paragraph 15 of Plaintiff's Complaint.

13 1.16. Apex admits EAF offers portfolio management, and denies the
14 remaining allegations contained in Paragraph 16 of Plaintiff's Complaint.

15 1.17. Apex admits it is a limited liability company that from time to time is
16 engaged, by use of the mails and telephone, in the business of attempting to collect a
17 "debt" as defined by 15 USC § 1692a(5), but Apex lacks sufficient information to
18 admit or deny the remaining allegations in Paragraph 17 of Plaintiff's Complaint,
19 and, therefore, denies the allegations contained in Paragraph 17 of Plaintiff's
20 Complaint.

21 1.18. Apex admits the allegations contained in Paragraph 18 of Plaintiff's
22 Complaint.

1 1.19. Apex denies the allegations contained in Paragraph 19 of Plaintiff's
2 Complaint.

3 1.20. Apex admits it collects debts, and lacks sufficient information to admit
4 or deny the remaining allegations in Paragraph 20 of Plaintiff's Complaint, and,
5 therefore, denies the remaining allegations contained in Paragraph 20 of Plaintiff's
6 Complaint.

7 1.21. Apex admits it collects debts, and lacks sufficient information to admit
8 or deny the remaining allegations in Paragraph 21 of Plaintiff's Complaint, and,
9 therefore, denies the remaining allegations contained in Paragraph 21 of Plaintiff's
10 Complaint.

11 1.22. Apex admits it collects debts, and lacks sufficient information to admit
12 or deny the remaining allegations in Paragraph 22 of Plaintiff's Complaint, and,
13 therefore, denies the remaining allegations contained in Paragraph 22 of Plaintiff's
14 Complaint.

15 1.23. Apex denies the allegations contained in Paragraph 23 of Plaintiff's
16 Complaint.

17 1.24. Apex denies the allegations contained in Paragraph 24 of Plaintiff's
18 Complaint.

19 1.25. Apex admit that Apex and EAF do business in the office building
20 located at 1120 Lake Cook Road, Buffalo Grove, Illinois, and deny the remaining
21 allegations made in Paragraph 25 of Plaintiff's Complaint.

22 1.26. Apex denies the allegations contained in Paragraph 26 of Plaintiff's

1 Complaint.

2 1.27. Apex denies the allegations contained in Paragraph 27 of Plaintiff's
3 Complaint.

4 1.28. Apex denies the allegations contained in Paragraph 28 of Plaintiff's
5 Complaint.

6 1.29. Apex denies the allegations contained in Paragraph 29 of Plaintiff's
7 Complaint.

8 1.30. Apex denies the allegations contained in Paragraph 30 of Plaintiff's
9 Complaint.

10 1.31. Apex denies the allegations contained in Paragraph 31 of Plaintiff's
11 Complaint.

12 1.32. Apex denies the allegations contained in Paragraph 32 of Plaintiff's
13 Complaint.

14 1.33. Apex denies the allegations contained in Paragraph 33 of Plaintiff's
15 Complaint.

16 1.34. Apex denies the allegations contained in Paragraph 34 of Plaintiff's
17 Complaint.

18 1.35. Apex denies the allegations contained in Paragraph 35 of Plaintiff's
19 Complaint.

20 1.36. Apex admits Plaintiff is a natural person, and denies the remaining
21 allegations contained in Paragraph 36 of Plaintiff's Complaint.

22 1.37. Apex lacks sufficient information to admit or deny the allegations in

1 Paragraph 37 of Plaintiff's Complaint, and, therefore, denies the allegations
2 contained in Paragraph 37 of Plaintiff's Complaint.

3 1.38. Apex admits it is a limited liability company that from time to time is
4 engaged, by use of the mails and telephone, in the business of attempting to collect a
5 "debt" as defined by 15 USC § 1692a(5), but Apex lacks sufficient information to
6 admit or deny the remaining allegations in Paragraph 38 of Plaintiff's Complaint,
7 and, therefore, denies the allegations contained in Paragraph 38 of Plaintiff's
8 Complaint.

9 1.39. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
10 made an effort to collect from Plaintiff an obligation, and denies the remaining
11 allegations contained in Paragraph 39 of Plaintiff's Complaint.

12 1.40. Apex denies the allegations contained in Paragraph 40 of Plaintiff's
13 Complaint.

14 1.41. Apex admits Plaintiff contacted Apex on November 6, 2009, and
15 Plaintiff spoke with R. Bowlen, and denies the remaining allegations contained in
16 Paragraph 41 of Plaintiff's Complaint.

17 1.42. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
18 made an effort to collect from Plaintiff an obligation, Apex informed Plaintiff that
19 Apex was a debt collector, and denies the remaining allegations contained in
20 Paragraph 42 of Plaintiff's Complaint.

21 1.43. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
22 made an effort to collect from Plaintiff an obligation, and denies the remaining

1 allegations contained in Paragraph 43 of Plaintiff's Complaint.

2 1.44. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
3 made an effort to collect from Plaintiff an obligation, and stated the words in the
4 quotation, and denies the remaining allegations contained in Paragraph 44 of
5 Plaintiff's Complaint.

6 1.45. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
7 made an effort to collect from Plaintiff an obligation and stated the words in the
8 quotation, and denies the remaining allegations contained in Paragraph 45 of
9 Plaintiff's Complaint.

10 1.46. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
11 made an effort to collect from Plaintiff an obligation and stated the words in the
12 quotation, and denies the remaining allegations contained in Paragraph 46 of
13 Plaintiff's Complaint.

14 1.47. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
15 made an effort to collect from Plaintiff an obligation and stated the words in the
16 quotation, and denies the remaining allegations contained in Paragraph 47 of
17 Plaintiff's Complaint.

18 1.48. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
19 made an effort to collect from Plaintiff an obligation and stated the words in the
20 quotation, and denies the remaining allegations contained in Paragraph 48 of
21 Plaintiff's Complaint.

22 1.49. Apex admits Plaintiff contacted Apex on November 6, 2009, and denies

1 the remaining allegations contained in Paragraph 49 of Plaintiff's Complaint.

2 1.50. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
3 made an effort to collect from Plaintiff an obligation and stated the words in the
4 quotation, and denies the remaining allegations contained in Paragraph 50 of
5 Plaintiff's Complaint.

6 1.51. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
7 made an effort to collect from Plaintiff an obligation and stated the words in the
8 quotation, and denies the remaining allegations contained in Paragraph 51 of
9 Plaintiff's Complaint.

10 1.52. Apex admits Plaintiff contacted Apex on November 6, 2009, and Apex
11 made an effort to collect from Plaintiff an obligation and stated the words in the
12 quotation, and denies the remaining allegations contained in Paragraph 52 of
13 Plaintiff's Complaint.

14 1.53. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
15 made an effort to collect from Plaintiff an obligation, and denies the remaining
16 allegations contained in Paragraph 53 of Plaintiff's Complaint.

17 1.54. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
18 made an effort to collect from Plaintiff an obligation, and denies the remaining
19 allegations contained in Paragraph 54 of Plaintiff's Complaint.

20 1.55. Apex admits Apex contacted Plaintiff on November 12, 2009, and
21 Plaintiff spoke with H. Finne, and denies the remaining allegations contained in
22 Paragraph 55 of Plaintiff's Complaint.

1 1.56. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
2 made an effort to collect from Plaintiff an obligation, and Apex informed Plaintiff
3 that Apex was a debt collector, and stated the words in the quotation, and denies the
4 remaining allegations contained in Paragraph 56 of Plaintiff's Complaint.

5 1.57. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
6 made an effort to collect from Plaintiff an obligation, and stated the words in the
7 quotation, and denies the remaining allegations contained in Paragraph 57 of
8 Plaintiff's Complaint.

9 1.58. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
10 made an effort to collect from Plaintiff an obligation, and stated the words in the
11 quotation, and denies the remaining allegations contained in Paragraph 58 of
12 Plaintiff's Complaint.

13 1.59. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
14 made an effort to collect from Plaintiff an obligation, and stated the words in the
15 quotation, and denies the remaining allegations contained in Paragraph 59 of
16 Plaintiff's Complaint.

17 1.60. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
18 made an effort to collect from Plaintiff an obligation, and stated the words in the
19 quotation, and denies the remaining allegations contained in Paragraph 60 of
20 Plaintiff's Complaint.

21 1.61. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
22 made an effort to collect from Plaintiff an obligation, and stated the words in the

1 quotation, and denies the remaining allegations contained in Paragraph 61 of
2 Plaintiff's Complaint.

3 1.62. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
4 made an effort to collect from Plaintiff an obligation, and stated the words in the
5 quotation, and denies the remaining allegations contained in Paragraph 62 of
6 Plaintiff's Complaint.

7 1.63. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
8 made an effort to collect from Plaintiff an obligation, and stated the words in the
9 quotation, and denies the remaining allegations contained in Paragraph 63 of
10 Plaintiff's Complaint.

11 1.64. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
12 made an effort to collect from Plaintiff an obligation, and stated the words in the
13 quotation, and denies the remaining allegations contained in Paragraph 64 of
14 Plaintiff's Complaint.

15 1.65. Apex admits Apex contacted Plaintiff on November 12, 2009, and Apex
16 made an effort to collect from Plaintiff an obligation, and stated the words in the
17 quotation, and denies the remaining allegations contained in Paragraph 65 of
18 Plaintiff's Complaint.

19 1.66. Apex admits Apex sent a letter to Plaintiff on or about November 13,
20 2009 demanding payment of an obligation, but Apex lacks sufficient information to
21 admit or deny the remaining allegations in Paragraph 66 of Plaintiff's Complaint,
22 and, therefore, denies the allegations contained in Paragraph 66 of Plaintiff's

1 Complaint.

2 1.67. Apex admits Apex sent a letter to Plaintiff on or about November 13,
3 2009 demanding payment of an obligation that contained information set forth in 15
4 USC § 1692g, but Apex lacks sufficient information to admit or deny the remaining
5 allegations in Paragraph 67 of Plaintiff's Complaint, and, therefore, denies the
6 allegations contained in Paragraph 67 of Plaintiff's Complaint.

7 1.68. Apex lacks sufficient information to admit or deny the allegations in
8 Paragraph 68 of Plaintiff's Complaint, and, therefore, denies the allegations
9 contained in Paragraph 68 of Plaintiff's Complaint.

10 1.69. Apex lacks sufficient information to admit or deny the allegations in
11 Paragraph 69 of Plaintiff's Complaint, and, therefore, denies the allegations
12 contained in Paragraph 69 of Plaintiff's Complaint.

13 1.70. Apex lacks sufficient information to admit or deny the allegations in
14 Paragraph 70 of Plaintiff's Complaint, and, therefore, denies the allegations
15 contained in Paragraph 70 of Plaintiff's Complaint.

16 1.71. Apex admits it called Plaintiff on November 25, 2009 in an effort to
17 collect an obligation from Plaintiff, and denies the remaining allegations contained in
18 Paragraph 71 of Plaintiff's Complaint.

19 1.72. Apex denies the allegations contained in Paragraph 72 of Plaintiff's
20 Complaint.

21 1.73. Apex admits and denies the allegations contained in Paragraph 73 as set
22 forth in paragraphs 1.1 through 1.72 of this Answer.

ANSWER AND AFFIRMATIVE DEFENSES OF
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1 1.74. Apex denies the allegations contained in Paragraph 74 of Plaintiff's
2 Complaint.

3 1.75. Apex admits and denies the allegations contained in Paragraph 75 as set
4 forth in paragraphs 1.1 through 1.72 of this Answer.

5 1.76. Apex denies the allegations contained in Paragraph 76 of Plaintiff's
6 Complaint.

7 1.77. Apex admits and denies the allegations contained in Paragraph 77 as set
8 forth in paragraphs 1.1 through 1.72 of this Answer.

9 1.78. Apex denies the allegations contained in Paragraph 78 of Plaintiff's
10 Complaint.

11 1.79. Apex admits and denies the allegations contained in Paragraph 79 as set
12 forth in paragraphs 1.1 through 1.72 of this Answer.

13 1.80. Apex denies the allegations contained in Paragraph 80 of Plaintiff's
14 Complaint.

15 1.81. Apex admits and denies the allegations contained in Paragraph 81 as set
16 forth in paragraphs 1.1 through 1.72 of this Answer.

17 1.82. Apex denies the allegations contained in Paragraph 82 of Plaintiff's
18 Complaint.

19 1.83. Apex admits and denies the allegations contained in Paragraph 83 as set
20 forth in paragraphs 1.1 through 1.72 of this Answer.

21 1.84. Apex denies the allegations contained in Paragraph 84 of Plaintiff's
22 Complaint.

1 1.85. Apex admits and denies the allegations contained in Paragraph 85 as set
2 forth in paragraphs 1.1 through 1.72 of this Answer.

3 1.86. Apex denies the allegations contained in Paragraph 86 of Plaintiff's
4 Complaint.

5 1.87. Apex admits the allegations contained in Paragraph 87 of Plaintiff's
6 Complaint.

7 1.88. Except as so admitted, Apex denies each and every allegation in
8 Plaintiff's Complaint.

9 II. AFFIRMATIVE DEFENSES

10 Having answered Plaintiff's complaint, Apex alleges the following affirmative
11 defenses.

12 2.1. **Lack of Standing.** Plaintiff lacks standing to assert some or all of the
13 claims stated in Plaintiff's complaint and to seek some or all of the relief requested.

14 2.2. **Failure to State Claims.**

15 2.3. **Lack of Subject Matter Jurisdiction.**

16 2.4. **Lack of Real Party in Interest.**

17 2.5. **Consent.** Apex had consent to contact Plaintiff on her cell phone.

18 2.6. **Established Business Relationship.** The claims of Plaintiff fail to the
19 extent they had established business relationships with Apex.

20 2.7. **Failure to Mitigate.** Plaintiff failed to mitigate any damages which she
21 may have suffered.

22 2.8. **Lack of Injury.** Plaintiff has sustained no cognizable injury or

1 damages.

2 2.9. **Bonafide Error.**

3 2.10. Apex procedures found that the address for Plaintiff given to them at
4 the time they received the account was invalid.

5 2.11. Apex did not have a good address for Plaintiff until on or about
6 November 13, 2009.

7 2.12. It would have been futile for Apex to send Plaintiff a letter to a bad
8 address prior to November 13, 2010.

9 2.13. Apex sent their first notice to Plaintiff after securing a good address
10 for Plaintiff so the letter did not return.

11 2.14. Any violation of law, which is specifically denied, was not intentional
12 and resulted from a bona fide error notwithstanding the maintenance of procedures
13 reasonably adapted to avoid any such error.

14 2.15. **Good Faith Reliance.** At all pertinent times, Apex acted in good
15 faith reliance on the information provided by the creditor or original creditor of the
16 account.

17 2.16. **Good Faith.** Apex acted in good faith at all times.

18 2.17. **No False Statements.** Apex did not make any false or misleading
19 representation to Plaintiff or anyone else.

20 2.18. **Waiver.** Plaintiff's claims are barred in whole or in part by the
21 doctrines of waiver or estoppel.

5 2.21. **Lack of Real Party in Interest.**

7 Wherefore having fully answered Plaintiff's complaint, having interposed
8 affirmative defenses, Apex prays for the following relief:

9 3.1. Dismissal of the Action with prejudice, and with costs and attorney fees
10 to Apex.

11 3.2. For such other and further relief as may be provided by law.

12	Dated October 18, 2010.
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14	s/ Jeffrey I. Hasson
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19

Certificate of Service

I hereby certify that on October 18, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Jon N. Robbins and Aaron Radbil, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: _____.

s/ Jeffrey I. Hasson
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ANSWER AND AFFIRMATIVE DEFENSES OF
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